

Message Text

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PAGE 01 STATE 126017
ORIGIN NEA-11

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DRAFTED BY NEA/ARP:J J ZIOLKOWSKI:LB
APPROVED BY NEA/ARP:J W TWINAM
-----009589 180528Z /17

P 180018Z MAY 78
FM SECSTATE WASHDC
TO AMERICAN CAST IRON PIPE COMPANY
BIRMINGHAM AL
TELEX NO 059A736
PHONE (205) 325-7701 PRIORITY

UNCLAS STATE 126017

E.O. 11652: N/A

TAGS: ETRD, BEXP, KU

SUBJECT: AMERICAN CAST IRON PIPE SHOULD BE ENCOURAGED
TO BID ON MEW STEEL PIPE TENDER

REFERENCES: (A) STATE 105797, (B) KUWAIT 2562
FOLLOWING IS TEXT OF CABLE FROM U.S. EMBASSY KUWAIT
MAY 17.

1. SUMMARY: REQUEST DEPT/USDOC PASS MESSAGE TO AMERICAN
CAST IPON PIPE CO. THAT THERE IS NO REASON WHY IT SHOULD
NOT SUBMIT TENDER DUE MAY 21, SINCE IT CAN DO SO WITHOUT
CONTRAVENING U.S. ANTIBOYCOTT LAW. END SUMMARY.

2. NASER MOHAMMED AL-SAYER, AGENT FOR AMERICAN CAST IRON
PIPE CO. (ACIP), ADVISED EMBOFF OF A TELEX DATED MAY 16
FROM ACIP STATING ACIP "UNABLE TO SUBMIT A TENDER DUE TO
CURRENT U.S. ANTIBOYCOTT LAW". GIVEN INFO REF B, WE FIND
THIS SURPRISING. INFO WE HAVE ON CASE FURTHER TO REF B
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IS AS FOLLOWS.

3. MR. LABIB, CONSULTANT TO ACIP BASED IN CAIRO, VISITED
EMBASSY AND AFTER LENGTHY MEETING INFORMED EMBOFF OF
FOLLOWING POINTS:

4. LENGTHY EXCHANGE OF TELEXES BETWEEN ACIP AND AL-SAYER

OVER STIFF "FORMAL" REQUIREMENTS IN MEW TENDER DOESN'T SEEM TO HAVE GOTTEN THE POINT HOME TO ACIP. THE POINT IS THAT KUWAIT WILL NOT REPEAT NOT "FORMALLY" TELL ACIP THEY DO NOT HAVE TO COMPLY WITH PARAGRAPH 14 REQUIREMENTS OF TENDER, CONCERNING SUBMISSION OF DOCUMENTS PROHIBITED BY U.S. LAW. HOWEVER, IF ACIP SUBMITS POSITIVE CERTIFICATES OF ORIGINS, ETC., AS ALLOWED BY U.S. LAW, PAST SIMILAR CASES EMBASSY HAS DEALT WITH AND ADVICE OF EXPERIENCED LOCAL AGENTS AND LAWYERS VERSED IN BOYCOTT MATTERS ALL INDICATE THAT ACIP WILL NOT BE RISKING ITS BOND. IT IS IN EFFECT MAKING A COUNTER-OFFER THAT MEW CAN EITHER ACCEPT OR REJECT. IF MEW REJECTS THE OFFER (AL-SAYER BELIEVES MEW UNLIKELY TO REJECT AS ACIP IS IN A VERY COMPETITIVE POSITION) THEN THE BOND IS RETURNED. IF MEW ACCEPTS THE DOCUMENTS TENDERED BY ACIP IN ACCORDANCE WITH U.S. LAW, INCLUDING THE DISCLAIMER, THEN THEY HAVE ACCEPTED ACIP'S OFFER AND AGAIN THERE IS NO RISK OF LOSING A BOND, AS ACCEPTABLE TERMS CAN BE NEGOTIATED INTO A CONTRACT ONCE A SELECTION IS MADE BY MEW.

5. ACTION REQUESTED: PLEASE CONTACT ACIP IMMEDIATELY (AS TENDER DEADLINE IS MAY 21) AND IMPRESS UPON COMPANY THAT BOYCOTT WILL NOT BE A PROBLEM IF THEY SUBMIT DOCUMENTS ALLOWED BY U.S. LAW AND LET AL-SAYER AND LABIB HANDLE MEW. THIS CASE IS SIMILAR TO NUMEROUS ONES DEPT. HAS QUERIED US ABOUT IN THE PAST. WE BELIEVE IT IS TIME
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WASHINGTON PASSED MESSAGE TO U.S. FIRMS THAT BOYCOTT LANGUAGE IN KUWAIT TENDER DOCUMENTS IS SOLVABLE PROBLEM BEST HANDLED BY FIRMS' AGENT AND LOCAL LAWYER PLUS VISIT BY AMERICAN REP OF FIRM. A STERILE EXCHANGE OF TELEXES, AS APPARENTLY HAPPENED IN THE CASE OF ACIP AND OTHER U.S. FIRMS IS NOT THE WAY TO SOLVE THE PROBLEM.

6. COMMENT: WE UNDERSTAND ACIP CAN SIMPLY NOT INITIAL THOSE CLAUSES IN TENDER WHICH U.S. LAW FORBIDS THEM TO AGREE TO, AND SUBMIT DOCUMENTS WITHOUT VIOLATING U.S. LAW. EMBASSY EXPERIENCE HAS BEEN KUWAITIS HAVE NEVER MADE BOYCOTT A MAKE OR BREAK ISSUE WHERE THEY WANTED THE COMPANY OTHERWISE. LABIB WILL STAY IN KUWAIT TILL 23RD OF MAY HOPING ACIP WILL RELENT AND BID. END TEXT.

7. DEPARTMENT OF STATE KUWAIT DESK OFFICER AND U.S. AMBASSADOR TO KUWAIT BELIEVE THAT U.S. GOVERNMENT SHOULD MAKE PRESENTATION TO GOVERNMENT OF KUWAIT TO REQUEST RETURN OF ACIPCO BOND IN UNLIKELY EVENT KUWAIT CLAIMS THE BOND FOR NON-COMPLIANCE WITH BOYCOTT LAW.
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